REMARKS

Applicant acknowledges receipt of the Office Action mailed November 26, 2007.

In the Office Action, the Examiner rejected claims 1-8 under 35 U.S.C. § 102(b) as being anticipated by *Fukushima et al.* (U.S. Patent No. 7,065,570); and objected to the Information Disclosure Statement ("IDS") filed on March 10, 2005.

In this Amendment, Applicant cancels claims 1-8, without prejudice or disclaimer, and adds new claims 9-12. Upon entry of this Amendment, claims 9-12 will be pending. Of the claims under examination, claims 9 and 11 are independent.

The originally-filed specification, claims, abstract, and drawings fully support the addition of new claims 9-12. No new matter has been introduced.

Applicant traverses the objection and rejection above and respectfully requests reconsideration for at least the reasons that follow.

I. 35 U.S.C. § 102(b) REJECTION

Applicant traverses the rejection of claims 1-8 under 35 U.S.C. § 102(b) as being anticipated by *Fukushima*. Applicant respectfully submits that the rejection has been rendered moot by the cancellation of claims 1-8, without prejudice or disclaimer. Applicant therefore requests that the rejection of claims 1-8 under 35 U.S.C. § 102(b) be withdrawn.

II. OBJECTION TO THE INFORMATION DISCLOSURE STATEMENT ("IDS")

The IDS filed on March 10, 2005 stands objected to under 37 C.F.R. §§ 1.97 and 1.98 and M.P.E.P. § 609 because the non-patent literature document submitted for consideration allegedly did not contain an English translation. Applicant respectfully

disagrees. Applicant submits that an English-language "concise statement of relevance" was filed with the non-patent literature document on March 10, 2005. Applicant encloses another courtesy copy of the "concise statement of relevance" for the Examiner's review and consideration. Applicant therefore requests that the objection to the IDS filed on March 10, 2005 be withdrawn and that the non-patent literature document be considered.

III. NEW CLAIMS

Applicant respectfully submits that new claims 9-12 patentably distinguish over *Fukushima* at least for the reasons described below.

In order to properly establish that *Fukushima* anticipates Applicant's claimed invention under 35 U.S.C. § 102, each and every element of each of the claims in issue must be found, either expressly described or under principles of inherency, in that single reference. Furthermore, "[t]he identical invention must be shown in as complete detail as is contained in the ... claim." *See* M.P.E.P. § 2131, quoting *Richardson v. Suzuki Motor Co.*, 868 F.2d 1126, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989).

Fukushima appears to disclose a management system for managing maintenance contracts for a machine, including a maintenance rank table organized by model; an input means that enters a model of a machine that makes a maintenance contract, a contract rank, and a maintenance actual result value; a means for storing a maintenance actual result value; and a determination means that determines whether a maintenance actual result value is larger than a maintenance predicted value. (*Fukushima*, col. 5, ll. 23-51).

Fukushima, however, does not disclose at least a **quantifying step** of computing an index value that indicates a quantified productivity of the machine over the predetermined service period based on the operation time detected in the operation time detection step and a predetermined Operations Time; a **comparing step** of comparing by a comparing unit the productivity of the machine quantified in the quantifying step with a predetermined productivity reference to compute a difference between the quantified productivity and the reference productivity; and a **charge amount determining step** of reading charge information for converting the difference between the quantified productivity of the machine and the reference productivity from a charge reference value storage unit and determining an amount of charge for the maintenance service in the service period based on a difference between the charge information and the difference computed by the comparing unit in the comparing step, as required by independent claim 9, and similarly independent claim 11.

Rather, as disclosed in col. 6, lines 4-17 of *Fukushima*, "if the maintenance actual result value is significantly lower than the maintenance predicted value, it is considered that the maintenance-receiving side pays too much. Thus, any profit may be returned to the maintenance-receiving side by means of a dividend payment, extension of maintenance contract time period or maintenance contract term, a cut at the time of a following maintenance contract, or the like. On the other hand, if the maintenance actual result value substantially exceeds the maintenance predicted value, it is loss of the maintenance-providing side. Thus, any profit may be returned to the maintenance-providing side by the re-examination of the contract rank, the increase of payment, or the like at the time of making a following maintenance contract." As further stressed in

Fukushima, the above-identified method/procedure has been implemented such that "the burden of the both sides that make a maintenance contract can be properly adjusted" and "any negotiation at the time for a future maintenance contract can also be performed easily." (*Id.* at col. 6, ll. 17-23).

This does not disclose and is quite different from Applicant's claimed invention, which includes a charge amount determining step / a charge amount determination unit that reads charge information for converting the difference between the quantified productivity of the machine and the reference productivity from a charge reference value storage unit and determines an amount of charge for the maintenance service in the service period based on a difference between the charge information and the difference computed by the comparing unit. That is, in Applicant's present invention, a charge amount is determined based on an actual charge amount for maintenance (calculated using charge information, the quantified productivity, and the reference productivity), whereas in *Fukushima*, a dividend, an extension of a maintenance contract time period, an increase in payment, or the like, is calculated so as to eliminate a surplus or deficit created by a difference between a contracted charge amount and an actual charge amount for maintenance.

Accordingly, with respect to independent claim 9, and similarly independent claim 11, *Fukushima* fails to teach Applicant's claimed combination, including, *inter alia*:

> a quantifying step of computing an index value that indicates a quantified productivity of the machine over the predetermined service period based on the operation time detected in the operation time detection step and a predetermined Operations Time;

> a comparing step of comparing by a comparing unit the productivity of the machine quantified in the quantifying step with a predetermined productivity reference to compute a difference between the quantified productivity and the reference productivity; and
>
> a charge amount determining step of reading charge information for converting the difference between the quantified productivity of the machine and the reference productivity from a charge reference value storage unit and determining an amount of charge for the maintenance service in the service period based on a difference between the charge information and the difference computed by the comparing unit in the comparing step.

Since *Fukushima* fails to disclose each and every element of new independent claims 9 and 11, *Fukushima* fails to anticipate claims 9 and 11, and claims 10 and 12, that correspondingly depend from claims 9 and 11. Therefore, claims 9-12 are patentable over *Fukushima*.

IV. CONCLUSION

Applicant respectfully submits that claims 9-12 are in condition for allowance.

The Office Action contains characterizations of the claims and the related art with which Applicant does not necessarily agree. Unless expressly noted otherwise, Applicant declines to subscribe to any statement or characterization in the Office Action.

In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account 06-0916.

Respectfully submitted,

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The Prior Art Document 1 is a special feature article titled "To the Limit of Utilization", and concerns a system for improving utilization to near the limit. This article mainly focuses on introduction of the system for improving utilization, and what are taught by the article about a charging method for determining the fee for machine maintenance service are only, for example, setting a penalty such as providing the service for free if the objective utilization cannot be achieved, setting a fixed fee system for a utilization assurance service, setting the fee high for the utilization assurance service, etc. Accordingly, the Prior Art Document 1 does not at all affect the patentability of the present invention.